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Paper No. 20

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JUL 07 2004

**OFFICE OF PETITIONS**

In re

Robert W. Brown and Bruce A. Kade  
Reissue Application No. 09/585,788  
Filing Date: June 5, 2000  
Reissue of Patent No. 5,759,606  
Original Issue Date: June 2, 1998  
Attorney Docket No. RE-001

DECISION ON PETITION

This is in response to the petition under 37 CFR 1.137(b), filed May 15, 2002. This is considered in light of the petition papers filed July 21, 2003.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

The above-identified reissue application of patent No. 5,579,606 (Issued June 2, 1998) became abandoned for failure to file a timely and proper response to the final Office action mailed June 29, 2001. This Office action set a shortened statutory period for reply of three (3) months from the mailing date of the action, with extensions of time obtainable under §1.136(a). On August 31, 2001, applicants timely replied with an amendment. However, this amendment was determined by the examiner not to place the application in condition for allowance (Advisory Action mailed October 3, 2001). On October 24, 2001, applicants replied with another amendment, made timely by an accompanying request for extension of time for response within the first month. However, this amendment was also determined by the examiner not to place the application in condition for allowance (Advisory Action mailed January 30, 2002). No proper reply having been received and no further extensions of time obtainable, the application became abandoned effective October 30, 2001. A Notice of Abandonment was mailed on April 1, 2002.

By letter mailed August 4, 2003, the petition filed May 15, 2002, was dismissed without consideration on the merits for failure to submit the petition fee set forth in 37 CFR 1.17(m). The petition fee was \$640; petitioner only submitted \$620. However, prior to the mailing of the August 4, 2003 letter, petitioner filed another petition under § 1.137(b), which included an

authorization to charge any required fees to Deposit Account No. 11-1257. Pursuant to that authorization, the deficiency in payment of the petition fee, \$30, has been charged to the Deposit Account.

The petition now includes payment of the petition fee, a proposed reply in the form of an amendment, and the required statement of unintentional delay.

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) the reply required to the outstanding Office action or notice, unless previously filed;

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in §1.20(d)) required pursuant to 37 CFR 1.137(d).

The instant petition does not satisfy requirement (1).

As to (1), petitioner filed an amendment in response to the final Office action. The proposed reply to a final Office action required for consideration of a petition to revive must be either (1) a Notice of Appeal (and fee required by law), (2) an amendment that *prima facie* places the application in condition for allowance, (3) the filing of a continuing application, (4) a request for continuing examination under §1.114, or (5) if applicable, a §1.129(a) submission. Petitioner's only submission, an amendment, has been determined by the examiner not to *prima facie* place the application in condition for allowance. Thus, petitioner has failed to submit the required reply.

In order for the application to be revived, petitioner must submit a required reply within the meaning of 37 CFR § 1.137(b)(1).

Further correspondence with respect to this matter should be addressed as follows:

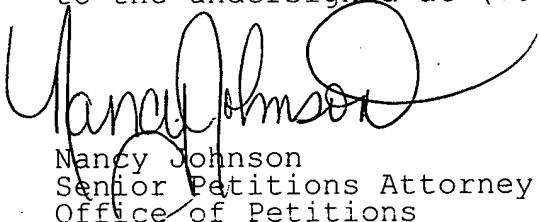
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By hand: Effective June 5, 2004, patent correspondence delivered by hand or delivery services, other than the USPS, to the Customer Window must be addressed as follows:

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Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0309.



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Office of Petitions

Enclosure: Advisory Action